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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

MAR 03 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on March 12, 2001. On January 14, 2002, the AAO affirmed its decision on a motion to reopen. A motion to reconsider was dismissed by the AAO on September 26, 2002. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the March 12, 2001, order dismissing the appeal will be affirmed. 1

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to adjust her status and remain in the United States with her husband.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on her husband. The waiver of inadmissibility application was denied accordingly. The AAO affirmed the district director's decision on appeal, and the AAO dismissed two subsequent motions.

In the present motion, counsel reasserts the claims made in her previous motions: that the AAO misapplied relevant law and failed to properly consider all of the evidence submitted in the applicant's case; that the applicant procured a false passport and visa to enter the United States because she was the victim of domestic violence in the Philippines; that the applicant's marriage is bona fide and that she has committed no other immigration violations and has no criminal history; that the applicant's husband will suffer economic and emotional hardship if the applicant's waiver application is denied; and that the applicant is entitled to adjustment of status pursuant to section 245(i) of the Act, 8 U.S.C. § 1255(i)).

Counsel additionally asserts in her present motion, that the applicant and her husband could suffer hardship in the form of criminal prosecution in the Philippines, based on the fact that Philippine law does not recognize divorce. Counsel asserts further that the AAO erred in not taking into the account that the applicant may have a credible fear of persecution if she returns to the Philippines.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

. . . .

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service

1 The AAO notes that, although counsel filed a new Form I-290, Notice of Appeal, and entitled her present October 24, 2002 motion in this matter, "Respondent's Brief in Support of Appeal to the Administrative Appeals Unit", the matter is in fact a third motion.

policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

In the present motion counsel reasserts that the circumstances which motivated the applicant to procure and gain admission into the United States with a fraudulent passport and visa should have been considered by the AAO. The AAO notes that counsel has provided no legal basis to support her assertion that surrounding circumstances must be examined when determining whether to waive a ground of inadmissibility. Moreover, as was noted in the previous AAO decisions, the applicant's inadmissibility is clearly established by the plain language of section 212(a)(6)(C)(i), which states that :

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO notes further that the present motion contains no new evidence or information pertaining to the economic or emotional hardship that the applicant's husband would suffer if the applicant were removed from the United States, and counsel's reasserted claims of economic and emotional hardship to the applicant's husband were thoroughly analyzed and discussed in the AAO's initial March 12, 2001, dismissal of the applicant's appeal, and in the AAO's subsequent January 14, 2002, dismissal of the applicant's motion to reopen.

Moreover, as noted in the AAO's previous decisions, section 212(i) of the Act clearly states that:

- 1) The Attorney General [now, Secretary, Homeland Security, "Secretary] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in **extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.**

(Emphasis added). Counsel's repeated assertions that the applicant herself may suffer harm if she is removed from the United States will therefore not be considered, as only extreme hardship to the applicant's husband can be considered for section 212(i) waiver of inadmissibility purposes.²

Counsel additionally reasserts in the present motion, that the applicant is eligible for adjustment of status under section 245(i) of the Act, pursuant to a separate application filed by her sister. As stated in the September 26, 2002, AAO dismissal of the applicant's previous motion to reconsider, the AAO's jurisdiction in the present matter is limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for a waiver of inadmissibility. The AAO therefore has no jurisdictional authority to address the applicant's eligibility for adjustment of status pursuant to the LIFE Act.

² The AAO notes that the proper venue for addressing assertions regarding the applicant's credible fear of persecution or asylum eligibility would be through the filing of an asylum application with the Asylum Division of Citizenship and Immigration Services.

In addition, the AAO is unpersuaded by counsel's assertion that the applicant's husband would be subjected to criminal prosecution in the Philippines because his prior divorce would not be recognized there, and he would subsequently be considered an adulterer or bigamist. The AAO notes first that, although there is evidence that divorce is not recognized in the Philippines, the record contains no evidence to indicate that any person who has divorced and then remarried would be subjected to criminal prosecution as a bigamist or adulterer in the Philippines. Moreover, precedent legal decisions on the issue reflect that the Philippine government would recognize the divorce of a U.S. citizen who divorced in the U.S. and subsequently married a Philippine citizen in the United States. *See Matter of S—L—P—*, 8 I&N Dec. 177 (BIA 1958) and *Matter of Whitehurst*, 12 I&N Dec. 299 (BIA 1967); *see also, Matter of Pajarillo*, 12 I&N Dec. 743 (BIA 1968).

Because counsel failed to identify any erroneous conclusion of law or statement of fact in her current motion, the motion will be dismissed.

ORDER: The motion is dismissed and the previous AAO decision dated March 12, 2001, will be affirmed.